

July 28 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

DA10-0364

GARY SWENSON, JR. AO# 37391  
DAWSON COUNTY CORRECTIONAL FACILITY  
440 COLORADO BLVD  
GLENDALE, MT 59330

FILED

JUL 28 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

Dear Honorable Court,

I am writing this letter in regards to a petition for post-conviction relief that I, GARY Swenson, Jr., filed in the County of Richland, Montana, Cause No. DV-09-107 on the 23<sup>RD</sup> of November 2009. I received the decision denying my petition on the 2<sup>ND</sup> day of April, 2010.

On May 31, 2010, I filed a notice of appeal in the 7<sup>th</sup> Judicial District Court, Richland County, and also served notice to the County Attorney and the Attorney General. I waited to hear a response and notice of filing until June 20<sup>th</sup>, at which time I wrote Mr. Ed Smith, inquiring about the status of my appeal.

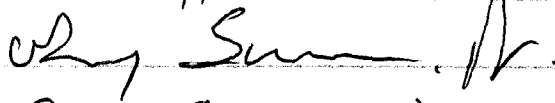
On June 23, 2010 I received a response from Mr. Ed Smith explaining that he had not received anything about my notice of appeal, and that I was supposed to file notice in the Supreme Court, as well as the District Court.

I was unaware of this at the time, and only filed my notice of appeal in the District Court and served copies to Mike Weber, Richland County Attorney, and the Montana Attorney General. This was an honest mistake, believing I had filed a timely appeal based on M.C.A. 46-21-203.

Therefore, based on the advice from Mr. Ed Smith, I am begging this honorable court to please grant me leave to file my notice of appeal out-of-time.

Thank you for taking the time to consider my request.

Sincerely,

  
GARY SWENSON, JR.

Enc.

DA10-0364

Form 1

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. \_\_\_\_\_

(To be assigned by the Clerk of the Supreme Court)

GARY SWENSON JR.  
Attorney for pro se  
Address 440 Colorado Blvd.  
~~Phone~~ Glendive, MT 59330  
Fax \_\_\_\_\_  
E-mail \_\_\_\_\_  
GARY Swenson, Jr.  
Appellant,

FILED

JUL 28 2010

Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

NOTICE OF APPEAL

v.  
State of Montana  
Appellee.

NOTICE is given that GARY SWENSON JR. the Appellant above-named and who is the petitioner (plaintiff/petitioner/or other designation) in that cause of action filed in the seventh Judicial District, in and for the County of Richland, as Cause No. DV-09-107 hereby appeals to the Supreme Court of the State of Montana from the final judgment or order entered in such action on the 5<sup>th</sup> day of April, 2010.

THE APPELLANT FURTHER CERTIFIES:

1. That this appeal \_\_\_ is/is not X subject to the mediation process required by M. R. App. P. 7. If subject to mediation, the money judgment being sought \_\_\_ is/is not \_\_\_ less than \$5,000.

2. That this appeal \_\_\_ is/is not X an appeal from an order certified as final under M. R. Civ. P. 54(b). If this is such an appeal, a true copy of the District Court's certification order is attached hereto as Exhibit "A."

3. That the notice required by M. R. App. P. 27 has been or will be given, within 11 days of the date hereof, to the Supreme Court and to the Montana Attorney General with respect to a challenge to the constitutionality of any act of the Montana Legislature.

4. That all available transcripts of the proceedings in this cause \_\_\_ have been/have not been X ordered from the court reporter contemporaneously with the filing of this notice of appeal. If all available transcripts have not been ordered, that Appellant has complied with the provisions of M. R. App. P. 8(3) contemporaneously with the filing of this notice of appeal.

5. That included herewith is the filing fee prescribed by statute, or the affidavit to proceed without payment of the required filing fee prescribed in the Appendix of Forms as Form 3.

Dated this 25<sup>th</sup> day of July, 2010.

W. J. Swenson, Jr.  
Attorney for pro se

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and accurate copy of the foregoing NOTICE OF APPEAL with the Clerk of the Montana Supreme Court; and that I have served true and accurate

copies of the foregoing NOTICE OF APPEAL upon the Clerk of the District Court, each attorney of record, and each party not represented by an attorney in the above-referenced District Court action, as follows:

(list name and address of the Clerk of the District Court and each attorney or party served).

Dated this 25<sup>th</sup> day of July, 2010.

GARY Swenson, Jr

Name

440 Colorado Blvd Glendive, MT 59330

Address

Wm Swenson, Jr. - Pro-se

Title

Clerk of District Court  
201 W. Main  
Sidney, MT 59270

Mike Weber  
Richland County Attorney  
201 W. Main  
Sidney, MT 59270

Montana Attorney General  
215 N. Sanders  
P.O. Box 201401  
Helena, MT 59620-1401